



Briefing 17/32 August 2017

Scottish Government - Raising Standards and Improving the Quality of Road Works in Scotland Consultation

To: All Chief Executives, Main Contacts and APSE Contacts in Scotland
For information only to England, Northern Ireland and Wales

Key issues

- **Introduction of Mandatory Quality Plans for those undertaking Road Works. Roadwork Information Reporting Time reduced. Minimum Safety standards increased.**
- **Scottish Road Works Commissioner to have wider scope to intervene, issue general directions, and a new power to inspect. Increased Punishments for Non-compliance. Utility Companies required to give Local Authorities notice.**
- **Section 61 of the Roads (Scotland) Act 1984 to be Revoked. The deadline for responding is Thursday 12th October 2017.**

Link to Consultation - <https://consult.scotland.gov.uk/transport-scotland/quality-of-road-works-in-scotland/>

Link to Consultation Paper - https://consult.scotland.gov.uk/transport-scotland/quality-of-road-works-in-scotland/user_uploads/road-works-draft-110717.pdf

Scottish Government Consultation

This consultation on Road Works Standards follows the independent review of the office of the Scottish Road Works Commissioner by Jim Barton. Whilst he identified no major issues, he recommended a series of improvements which this consultation now seeks comment on. The proposals are aimed generally at increasing the scope and powers of the Road Works Commissioner, including their power of enforcement, as well as modifying some of the regulations surrounding road work quality and how information of road works is shared amongst stakeholders.

These changes would be implemented through a variety of Scottish Government mechanisms. Primary Legislation would be responsible for the majority of changes, however, secondary legislation, changes to Codes of Practice and Guidance are also proposed methods of delivery. The consultation paper details which of these methods would be used for each proposed change.

Quality

The Scottish Government aim to make those who conduct roadworks use quality plans to demonstrate that roads have been reinstated properly. The Roads Authorities and Utilities Committee (Scotland) are expected to devise a system to accommodate this, with a report due by the end of 2017. These plans would be reviewed after a suitable period (the suggestion is 6 years) for their effectiveness, and depending on success the latent defect process may be changed.

The Government are seeking advice on whether the introduction of these plans should be coupled with a guarantee period of 6 years for utility reinstatements for all work, regardless of depth.

Clarity to be provided so that the Specification for the Reinstatement of Openings in Roads (SROR) would include all activities related to road works (e.g. signing, lighting, excavation etc.) and Scottish Ministers would have the power to create a code of conduct.

Road Work Information

To meet an increased desire for Real Time Information, there are a variety of proposals aimed at improving the collection of Roadwork Information. The Scottish Road Works Register (SRWR) would need to be updated within 2 hours for actual starts, works completed, works cleared, and works closed. If any of these happen outwith office hours, then the notification would be required within 2 hours of the start of the next business day. This is compared with current regulations which do not require notifications in some cases until midday the next day.

As well as this, the validity period for planned road works would be reduced to 4 days for normal roads and 2 for traffic sensitive roads. This is down from 7 and 3 respectively. This aims to reduce confusion, congestion and reputational damage to local authorities, leading to organisational and economic benefits.

The Community Apparatus Data Vault System (Vault) contains Plant Information on a central database, which allows workers to see information on what lies beneath the surface of roads they are working on. This is currently a voluntary system, and telecom companies have been notably reluctant to add their information to this due to security concerns. The Scottish Government aim to make providing Plant Information to this system mandatory.

To alleviate concerns about the security of commercially sensitive information, the Scottish Government propose to exempt the SRWR from Freedom of Information Requests. They also ask for feedback on whether this should be replaced with a duty to publish information relating to planned and actual road works.

Consistency

The consultation contains a variety of proposals aiming to apply the same standards to all road work sites. This would mean that the Safety at Street Works and Road Works - A Code of Practice (Known also as The Red Book) would apply to roads authority works as well as utility company works. They also propose that the minimum training standards for all squad digs be raised, including having all workers trained in both "Signing, Lighting and Guarding" and "Location and Avoidance of Underground Apparatus", and having more operatives hold "Street Works" cards from the Street Works Qualifications Register (SWQR) for the appropriate work.

This would also apply to the notifications to the SRWR so that Local Authorities and Utilities Companies would have the same requirements.

Enforcement

Expanding the role of the Scottish Road Works Commissioner (SRWC) to include inspection also means that enforcement powers also need to be adjusted. The Scottish Government want to give the SRWC power to intervene when a roads authority or utility company does not fulfil their duties under the New Roads and Street Works Act 1991 (NRSWA) or the Roads (Scotland) Act 1984 (RSA).

It also aims to provide the means for roads authority to escalate issues of non-compliance to the Commissioner.

The Scottish Government propose to give the SRWC more general power of direction, and that failure to comply with these directions will also be subject to the same enforcement powers. The SRWC will also be able to refer persistent non-compliance to the Scottish Ministers, with the aim to maximise reputational risk.

The maximum penalty the SRWC can issue will be increased to £100,000 from £50,000. They will also be recognised by the Crown Office and Procurator Fiscal Service as a specialist non-police reporting agency. The consultation suggest that a new offence may need to be created which can lead to enforcement action. Any offences will be capable of solemn prosecution as well as summary, with courts able to access higher penalties if appropriate.

The Consultation contains proposals for changes to Fixed Penalty Notices, used by Road authorities. Scope would be widened to apply more generally to the NRSWA, though would only be issued after a formal written warning. This would also be the case for Signing, Lighting and Guarding failures. The SRWC would also have the ability to use Fixed Penalty Notices. The Fixed Penalty would be set at 20% of the value of the maximum fine set for the associated criminal offence. This, it is argued, accounts for any future changes in statute.

Inspection

Under the proposals, the Scottish Road Works Commissioner would be granted the power of inspection. This would be in addition to the inspections carried out by roads authorities.

The legislation introduced would give the SRWC the power to appoint inspectors and that those inspectors would be legally entitled to attend road work sites and ask questions, inspect and demand documents and carry out tests as required. The legislation also carried technical aspects such as clarifying the legal personality of the SRWC role and granting the commissioner and appointees statutory protection.

Other

The power to define “substantial works” and the length of time restrictions would apply after these would become secondary legislation, decided on by Scottish Ministers.

Section 132 of the NRSWA, which deals with deals with utility reinstatements affected by subsequent works, will be repealed, with the aim to have the quality plans cover this area instead. Section 61 would also be repealed, as the preference would be for permission for roadworks to be sought through section 109 instead, which is more thorough in requirements. Existing Section 61 agreements would be allowed to stand.

APSE Comment

APSE would encourage Road Authorities to respond to this consultation, as the changes would have a large effect on their work. Local Councils are often held responsible by the public for road works, particularly when they cause inconvenience, so it is important that they play a part in shaping any future rules. The full list of Questions is provided in the appendix to this document.

There are a variety of resources that APSE can offer to assist local authorities with regard to roads and road works. Throughout the year we host a number of [Advisory Groups](#) that allow our members to have informal discussions on a number of areas, including on Roads and Street Lighting. Members can also use our [Network Queries](#) service to ask other local authorities for advice.

Response Details

If you wish your comments to be included in an APSE response to this consultation paper, please send them to Garry Lee at glee@apse.org.uk by Thursday 5th October 2017. Alternatively, you can submit your response online directly by [clicking here](#). The closing date for responses to this consultation is Tuesday 12th October 2017.

Iain Scherr
Research and Coordination Officer

Appendix 1

| Consultation Questions | |
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| Q1 | Should utility companies be required to produce quality plans for proposed road works? Yes/No (Please explain your answer) |
| Q2 | Should there be a single guarantee period offered on utility reinstatements of 6 years regardless of the depth of excavation? Yes/No (Please explain your answer) |
| Q3 | If introduced, should the impact of quality plans be reviewed after a suitable period (perhaps 6 years), and the necessity of the latent defect process be assessed? Yes/No (Please explain your answer) |
| Q4 | Should we clarify the scope for a code of practice on reinstatement (currently the SROR) includes all activity relating to the execution of road works e.g. signing lighting guarding, excavation, reinstatement, and guarantee period? Yes/No (Please explain your answer) |
| Q5 | a) Should start actual starts, works completed, works cleared, and works closed notices be notified within 2 hours, or within 2 hours of the start of the next business day if outwith office hours? Yes/No (Please explain your answer) b) Should the validity period for notices placed onto the SRWR in relation to planned works be reduced, the proposal being that they be set at 4 days or 2 days depending on the traffic sensitivity of the road? Yes/No (Please explain your answer) |
| Q6 | Should the provision of plant information to the Scottish Road Works Register should be made mandatory? Yes/No (Please explain your answer) |
| Q7 | a) Should the obligation on the Scottish Road Works Commissioner to make the Scottish Road Works Register available for inspection be repealed? Yes/No (Please explain your answer) b) Should the duty to make the Scottish Road Works Register available for inspection be replaced with a duty on the Scottish Road Works Commissioner to actively publish information relating to the location of planned and actual road works? Yes/No (Please explain your answer) |
| Q8 | Should “the Safety at Street Works and Road Works A Code of Practice” apply equally to roads authority and utility road work sites? Yes/No (Please explain your answer) |
| Q9 | Should utility and roads authority workers be required to be qualified in the “Signing Lighting and Guarding” of a site, and also in the “Location and Avoidance of Underground Apparatus”? Yes/No (Please explain your answer) |
| Q10 | Should the minimum legal requirement for at least ‘one’ operative to be qualified be increased to ensure that more operatives at each road work site hold formal qualifications for the particular work they are undertaking? Yes/No (Please explain your answer) |
| Q11 | Do you agree with our policy proposals to revise and improve the enforcement of road works in Scotland by the Scottish Road Works Commissioner? |

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| | Yes/No (Please explain your answer) |
| Q12 | Do you agree with our policy proposals to reform the use of Fixed Penalty Notices for the enforcement of road works in Scotland? Yes/No (Please explain your answer) |
| Q13 | Do you agree with our policy proposals to enhance the role of the Scottish Road Works Commissioner? Yes/No (Please explain your answer) |
| Q14 | Should there be flexibility to prescribe the restricted period following substantial works through secondary legislation? Yes/No (Please explain your answer) |
| Q15 | Should we clarify that a roads authority is included within those to be notified under Section 114 of NRSWA? Yes/No (Please explain your answer) |
| Q16 | Should roads authorities be one of the parties that must be notified under statute to help formalise the use of early and late start consents? Yes/No (Please explain your answer) |
| Q17 | Should Section 132 of NRSWA should be repealed? Yes/No (Please explain your answer) |
| Q18 | Should noticing requirements for roads authorities and utility companies be exactly the same in order to facilitate coordination and cooperation? Yes/No (Please explain your answer) |
| Q19 | Should Section 61 of the Roads (Scotland) Act 1984 be revoked with savings provisions for existing agreements? Yes/No (Please explain your answer) |
| Impacts | |
| Q20 | Are there any likely impacts the proposals contained within this consultation may have on particular groups of people, with reference to the 'protected characteristics' listed above? Please be as specific as possible |
| Q21 | Do you think the proposals contained within this consultation may have any additional implications on the safety of children and young people? If yes, what would these implications be? Please be as specific as possible. |
| Q22 | Do you think the proposals contained in this consultation are likely to increase or reduce the costs and burdens placed on any sector? Please be as specific as possible. |
| Q23 | Are there any likely impacts the proposals contained in this consultation may have upon the privacy of individuals? Please be as specific as possible. |
| Q24 | Are there any likely impacts the proposals contained in this consultation may have upon the environment? |